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NO. 80-2094

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

JOHN C. WEAVER, JR., M.D. and
BMA OF OAKLAND, INC.,

Petitioners,

vs.

BRENDA MARIE PAYTON,

Respondent.

BRIEF OF AMICUS CURIAE IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

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INTEREST AND POSITION OF THE AMICUS CURIAE, THE RENAL PHYSICIANS ASSOCIATION[1]

The Renal Physicians Association as Amicus Curiae wishes to offer its cumulative experience and unique expertise in the treatment of dialysis patients to assist this Court in its review of the issue herein presented. The Association is a national organization comprised of nephrologists and transplant surgeons specializing in the prevention and treatment of kidney disease. It is the nephrologist who is the physician primarily responsible for the care of persons suffering from end-stage renal disease and in need of dialysis to maintain life.

[1]For purposes of this brief, the Statement of the Case contained in the Petitioner's Petition for Writ of Certiorari to the California Supreme Court is herein adopted and incorporated.

The constitutional issue which mandates this Court's immediate review is whether it is a violation of the Thirteenth Amendment for a physician, or any individual, to be compelled to provide personal services to another individual. The decision of the California Supreme Court compelling Dr. Weaver's services conflicts with the relevant decisions of this Court and the spirit and intent of the Thirteenth Amendment. Moreover, it is the position of the Renal Physicians Association that compelling any physician to provide services to a specific patient violates Canon VI of the medical profession's Canons of Ethics.

Canon VI of the American Medical Association's Canons of Ethics provides that no physician shall be compelled to treat any patient. This Canon serves to guarantee to the physician the right to determine the best interests of his patients as a whole in accordance with the principles of his profession. It is this medical discretion, so necessary to the integrity of the medical profession, which the California Supreme Court has attempted to eliminate.

Extremely disruptive and uncooperative patients are relatively atypical, but exist in sufficient number to pose a significant problem for the treating physician and other patients. When the disruptive patient creates an environment that is dangerous for the other patients and becomes medically unmanageable because of an intentional failure to follow the prescribed therapy, the physician must be free to decide to discontinue treating the patient, based on his or her best medical judgment and experience within the parameters of medical ethics. The ultimate victim of a court decision compelling a physician to continue providing services to any patient for whom care has been assumed is the patient. The chilling effect of such a decision would be to discourage physicians from accepting difficult patients in the first instance. The "Good Samaritan" physician, such as Dr. Weaver, will be a creature of the past, and patients like Ms. Payton with a history of disruptive behavior will never be given the opportunity to prove to the medical community that they can adhere to prescribed diets

and treatments and become acceptable patients. Resolution of this controversy in favor of Ms. Payton would ultimately be disadvantageous to those patients like her.

To fully comprehend the personal servitude which the California Supreme Court's decision has imposed, it is necessary to understand the nature of dialysis and the roles of the dialysis facility, the physician and the patient in this treatment mode. With the advantage of its members' experience with and insight into end-stage renal disease and the nature of dialysis, the Association would like to convey to this Court some sense of the necessity for cooperation between the physician and patient.

In order to function properly, the human body must maintain a delicate chemical balance. The kidneys play a major role in maintaining the body's chemical balance by ridding it of excess fluids and metabolic end products which if not removed will result in uremia, a disease which ultimately poisons the body and results in death.

End-stage renal disease (ESRD) occurs when an individual suffers an irreversible loss of kidney function. One mode of treatment for ESRD patients (and the one at issue in the instant case) is hemodialysis, in which a machine replaces the kidney, cleansing impurities from the body by passing the blood across a semipermeable membrane.[2] Dialysis is typically a four to six hour procedure which must be performed two to three times per week throughout an ESRD patient's lifetime. Failure of a patient to undergo treatment will result in a life-threatening accumulation of

[2]The End-Stage Renal Disease (ESRD) program, a model program of Medicare reimbursed health care, was created pursuant to the Social Security Amendments of 1972. The ESRD program began with approximately 11,000 beneficiaries on July 1, 1973, and had an average annual enrollment for 1979 of 56,000 patients. The patient population is projected by the Health Care Financing Administration to grow to 90,000 by 1995, though actual numbers have steadily exceeded previous estimates, and no one is certain where the equilibrium level is. R. Rettig, Implementing the ESRD Program of Medicare vii (R-2505-HCFA/HEW, September, 1980).

toxic waste in the body. For dialysis to be effective, an ESRD patient must follow a strict diet between treatments to prevent dangerous fluid accumulation in the body. Thus, effective dialysis therapy for ESRD patients is dependent upon the patient's cooperation and adherence to the prescribed medical treatment. An uncooperative patient pursues a path of self-destruction since a physician can be only as helpful as the patient permits.

A typical dialysis facility will operate many machines during each four to six hour treatment period or shift. Several patients are dialyzed during each shift. Frequently, the patient treatment area of the facility will be a single large room containing rows of reclining chairs with dialysis machines contiguous to the chairs. The machine and chair are referred to as a "station". Dialysis itself is a routine treatment; the patient arrives, is attached to the machine for four to six hours, and returns to his or her normal every-day activities until the next treatment.

During the dialysis session, physicians and staff persons go from station to station monitoring each patient's treatment. As in any health care facility, the number of patients during a shift exceeds the number of physicians and staff members available for routine monitoring. Thus, it is critical that those monitoring the patients are not needlessly distracted or hampered in their efforts to care for the patients.

The physician and staff must be free to monitor continually each patient and must be readily available in the event that an emergency develops with any individual patient. The person whose behavior ultimately controls the effectiveness of the therapy, however, is the patient. If a patient adheres to the prescribed diet and schedule of treatments, he or she has the potential for living a normal, productive life. As a result, an atmosphere of mutual support and assistance between the medical staff and patients, and among the patients themselves, becomes as crucial to the patient's rehabilitation and effective therapy as the dialysis treatments. This atmosphere of mutual support and assistance is

shattered by the disruptive patient who interferes not only with her own care, but also that of her fellow patients.

No individual should be compelled to serve another individual. This principle is embodied in the Thirteenth Amendment and fundamental to the concept of a free society. In the case of a renal physician, compelling his or her services to a specific patient cannot reconstruct the relationship and environment necessary for effective therapy. On behalf of its members, renal physicians, and the medical community as a whole, the Renal Physicians Association urges this Court to reaffirm this Thirteenth Amendment principle and free Dr. Weaver from the involuntary servitude and violation of his medical ethics imposed upon him by the California Supreme Court.

SUMMARY OF ARGUMENT

It is a long-standing and familiar rule of equity that equity will not specifically enforce a contract for personal services. This Court noted long ago that courts of equity should not specifically enforce contracts for personal services. *See, e.g., Rutland Marble Co. v. Ripley,* 77 U.S. (10 Wall.) 339 (1870). Although equitable enforcement is primarily an issue of state law, in the present case the California Supreme Court's disregard of the well established equitable rule, coupled with the procedural delay under the state's judicial system, raise the substantial federal question of whether the California Supreme Court's decision runs afoul of the Thirteenth Amendment prohibition of involuntary servitude. The temporary order issued by the trial court has thus far compelled the doctor to treat Ms. Payton for two years. As noted in Petitioner's Brief for Certiorari, it will be at least two years before oral argument is even heard in the California Court of Appeals. Petitioner's Brief for Certiorari at 14. During that delay, Dr. Weaver is an involuntary servant of Ms. Payton, singled out by the state to serve her against his will.

Involuntary servitude exists whenever an individual is compelled to provide personal services against his will to another

individual. A physician's duties to a patient are personal to that patient, and those services do not fall within the category of compulsory services considered by this Court to be acceptable under the Thirteenth Amendment, that is, service performed for the sovereign for the general public good. Compulsory service from one specific individual to another to benefit the private individual, the type of involuntary service at issue in this case, constitutes involuntary servitude within the meaning of the Thirteenth Amendment as interpreted by this Court.

ARGUMENT FOR GRANTING THE WRIT

I. The California Supreme Court Has Decided An Important Question Under The Thirteenth Amendment Which Has Not Been, But Should Be, Settled By This Court.

This case presents the Court with a direct order of a state supreme court compelling an individual to provide services to another individual against his will. The paucity of decisions from the Court in this area is testimony to its uniqueness and the few instances in which any state or the federal government has sought to compel personal services, directly or indirectly, in any form. This Court must therefore address this fundamental issue and provide some guidance for the Association and its members, and the medical community as a whole, whose freedom is at stake.

II. The Thirteenth Amendment Prohibits Any Individual From Being Submitted To Involuntary Servitude.

The decision of the California Supreme Court compelling a physician in private practice to provide medical treatment to a particular individual conflicts directly with every decision of this Court prohibiting involuntary servitude under the Thirteenth Amendment. The constitutional issue in this case arises under Section 1 of the Thirteenth Amendment, which provides:

> Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. U.S. Const. amend. XIII.

The Thirteenth Amendment embodies a fundamental principle deeply rooted in the history of this nation—that no man should be compelled against his will to personally serve another. Implicit in the wording of the Amendment, "neither slavery nor involuntary servitude", was the framers' intent that the Amendment prohibited not only race related slavery, but also any form of compulsory labor from one individual to another. This Court has accepted and repeatedly affirmed such an interpretation of the Amendment's prohibition of involuntary servitude:

> While the immediate concern was with African slavery, the Amendment was not limited to that. It was a charter of universal freedom for all persons, of whatever race, color or estate, under the flag. The words involuntary servitude have a "larger meaning than slavery." *Bailey v. Alabama*, 219 U.S. 219, 241 (1910), citing *Slaughterhouse Cases*, 83 U.S. (16 Wall.) 36, 69 (1872).

The Thirteenth Amendment preserves one of the most fundamental constitutional freedoms in that ". . . the undoubted aim of the Thirteenth Amendment . . . was not merely to end slavery but to maintain a system of completely free and voluntary labor throughout the United States." *Pollock v. Williams*, 322 U.S. 4, 17 (1944). In *Pollock*, the Court noted that whatever beneficial intent or valid social policy compulsory labor might serve in a particular instance, the public policy and Thirteenth Amendment prohibition against involuntary servitude is paramount. In accordance with this Court's decisions and the Thirteenth Amendment, therefore, the Petitioner, Dr. Weaver, may not be compelled by a state court to provide personal services to the Respondent, Brenda Payton.

III. Involuntary Servitude Within The Meaning Of The Thirteenth Amendment Is The Compulsion Of Personal Services From One Individual To Another Individual.

Involuntary servitude within the meaning of the Thirteenth Amendment exists whenever a specific individual is compelled to provide personal services to another individual. In one of the few

lower court decisions examining the nature of involuntary servitude in depth, Justice Harlan, then speaking for the Seventh Circuit Court of Appeals, concluded:

> [t]he vital question remains whether a court of equity will, under any circumstances, by injunction, prevent one individual from quitting the personal service of another? An affirmative answer to this question is not, we think, justified by any authority to which our attention has been called or of which we are aware. It would be an invasion of one's natural liberty to compel him to work for or to remain in the personal service of another. *One who is placed under such constraint is in a condition of involuntary servitude, — a condition which the supreme law of the land declares shall not exist within the United States, or in any place subject to their jurisdiction. Arthur v. Oakes*, 63 F. 310, 318 (7th Cir. 1894) (emphasis added).

In *Arthur v. Oakes*, as in the present case, the involuntary servitude was imposed by means of a state court order prohibiting individual employees from quitting the service of a specific party. For the reasons stated above, the Seventh Circuit Court of Appeals concluded that such an order could not withstand constitutional scrutiny. The decision stands as direct authority to prohibit as a violation of the Thirteenth Amendment any state court order compelling a private individual to provide personal services to another individual.

The rationale of Justice Harlan's opinion also serves to distinguish those few cases in which compulsory personal services have been permitted by the Court. As a member of society, an individual may be compelled by legislation to perform services to the sovereign for the general good. For example, a citizen may be required by legislation to work on the repair of public roads or to serve in the military. *Butler v. Perry*, 240 U.S. 328 (1916); *Selective Draft Law Cases*, 245 U.S. 366 (1918). Under such circumstances, a general duty to the sovereign is imposed upon a group of individuals for the general good. Such societal obligations compelled by appropriate state or federal legislation are not involun-

tary servitude within the meaning or intent of the Thirteenth Amendment.

It is the nature of the servitude, not the purpose of imposing the servitude, which determines whether a violation of the Thirteenth Amendment has occurred. As Justice Harlan asserted in *Arthur v. Oakes*:

> It is supposed that these principles [that contracts for personal services should not be specifically enforced] are inapplicable or should not be applied in the case of employes of a railroad company, which, under legislative sanction, constructs and maintains a public highway primarily for the convenience of the people, and in the regular operation of which the public are vitally interested. Undoubtedly the simultaneous cessation of work by any considerable number of the employes of a railroad corporation, without previous notice, will have an injurious effect, and for a time inconvenience the public. But these evils, great as they are, and although arising in many cases from the inconsiderate conduct of employes and employers, both equally indifferent to the general welfare, are to be met and remedied by legislation restraining alike employes and employers so far as in the existence, maintenance and safe management of public highways. In the absence of legislation to the contrary, the right of one in the service of a quasi public corporation to withdraw therefrom at such time as he sees fit, and the right of the managers of such a corporation to discharge an employe from service whenever they see fit, must be deemed so far absolute that no court of equity will compel him against his will, to remain in such service, or actually to perform the personal acts required in such employments, or compel such managers against their will, to keep a particular employe in their service. 63 F. at 319.

The *Oakes* decision makes two points clear: (1) that a general duty to the sovereign imposed by legislation for the general good is distinguishable for purposes of the Thirteenth Amendment from labor coerced from one individual to another, which is a violation of the Thirteenth Amendment; and (2) that assertions of public policy or the quasi public function of the individual sought to be coerced cannot constitutionally transform involuntary servi-

tude from one individual to another into a general duty to the sovereign for the general good.

Compelling a physician in private practice to provide medical treatment to a particular individual is the very type of coerced labor that the Thirteenth Amendment was intended to eliminate. Vague, self-serving assertions of public policy or the public good cannot mask the unconstitutional involuntary servitude imposed upon Dr. Weaver as some form of general duty to the sovereign for the general good. In fact, few public policies are as deeply ingrained in American jurisprudence as the policy against compulsory personal service from one individual to another. This policy is embodied in the Thirteenth Amendment, and violated by the decision of the California Supreme Court compelling Dr. Weaver to provide services to Brenda Payton.

IV. There Is No Question That The California Supreme Court Decision Is Compelling Personal Services From One Individual, Dr. Weaver, To Another Individual, Brenda Payton, So As To Constitute An Involuntary Servitude Within The Meaning Of The Thirteenth Amendment.

It is difficult to posit a court order more clearly compelling involuntary personal services from one individual to another or to posit a relationship less conducive to such an order. As pointed out in Petitioner's brief, Dr. Weaver has no choice but to be "... on a 24-hour call to this patient, disrupting his medical practice, his care for his other patients, his home life and his freedom at large." Petitioner's Brief for Certiorari at 8. Ms. Payton, on the other hand, has several choices available to her.[3] For example, Ms. Payton could voluntarily enter a drug therapy program which

[3]The trial court noted in Finding of Fact 21 as follows:
Petitioner has freedom of several choices available by which she can be kept away from dangerous drugs and alcohol, helped to stay on a proper dietary regimen and in all other ways caused to cooperate with those attempting to provide her with care. Petitioner therefore is not without means to arrange for her own care. See Appendix E.

would arrange for her dialysis. She could request that the court appoint a conservator who would then arrange for her needed treatment. The most obvious alternative, and the one she appears disinclined to choose, is to cooperate in her therapy to insure her own effective treatment. For six years Dr. Weaver has attempted to treat Ms. Payton. She has consistently and repeatedly refused to cooperate with Dr. Weaver and adhere to his prescribed therapy. Petitioner's Brief for Certiorari at 5-6. She arrives intoxicated at the facility, which requires that several members of the staff prepare her for treatment at the expense of the other patients at the facility. *Id.* at 6. She has on several occasions interrupted her treatment either by demanding that she be disconnected from the machine or by actually pulling the dialysis needle from the connecting shunt in her leg, delaying other patients' access to the machine and causing contamination of the treatment area. *Id.* at 6. At the time of Dr. Weaver's notice of termination, her behavior had reached the stage where he had found it necessary to have her individually monitored, which is not only economically wasteful but a threat to the effective monitoring of the other patients. *Id.* at 6.

In addition to the strain placed on staff monitoring efforts, Ms. Payton's conduct places a severe strain on the other patients. As noted earlier, dialysis is a routine procedure that can afford a patient the opportunity to lead a normal life. An essential element of effective dialysis treatment is personal therapy and rehabilitation to promote a sense of normalcy in the lives of the patients; yet Ms. Payton's behavior at Dr. Weaver's facility makes an atmosphere of normalcy impossible. She screams obscenities at Dr. Weaver and members of his staff and must often be restrained until she can be calmed down. *Id.* at 6. She has exposed her genitals to nurses and to other patients and has disconnected herself from her dialysis machine, resulting in blood spewing from her leg. *Id.* at 6. These episodes are frequent and are played before a captive audience of as many as thirty patients undergoing dialysis. *Id.* at 6. The only alternative for these patients is to either endure Ms.

Payton's outbursts and disruptions in their medical treatment or give up the physician upon which they rely.

Moreover, during the six years that Dr. Weaver has been treating Ms. Payton, Ms. Payton's failure to cooperate and follow her physician's orders has made her own treatment an exercise in futility.

Ms. Payton refuses to adhere to the diet and schedule of dialysis treatments prescribed by Dr. Weaver. Despite her chronic condition, for example, she continues to use barbiturates and other potentially lethal drugs. *Id.* at 6. Since she has no kidney function, these drugs cannot be metabolized and excreted by her body and therefore remain in her system until she is dialyzed. Her drug abuse also leads to other complications, such as dangerously low blood pressure which causes seizures or convulsions during dialysis. *Id.* at 6.

The delay caused by her disruptive behavior often precludes Ms. Payton from receiving the full dialyzing treatment she requires. If she is not dialyzed for the prescribed length of time, her body cannot be fully drained of all the metabolic end products and toxins that accumulate between treatments. Her failure to adhere to the diet prescribed by Dr. Weaver further complicates her condition. It is critical that a patient with chronic kidney failure control her fluid and food intake between dialysis treatments. A dialysis treatment lasts only for a finite period of time and any fluids not drained from the body during the dialyzing session remain there until the next treatment. Furthermore, when large amounts of fluid accumulate in the bloodstream, a rapid draining of the fluid such as occurs during dialysis can result in a loss of blood pressure, and consequently, seizures or convulsions. Ms. Payton consistently ignores her prescribed diet and liquid intake limitations, gaining as much as forty pounds between dialysis sessions. *Id.* at 7.

A court of equity cannot restore the spirit of cooperation necessary for the continued viability of the contract, nor can it act

as a watchdog in perpetuity to assure proper performance. As Justice Harlan explained:

> The rule, we think, is without exception that equity will not compel the actual, affirmative performance by an employee of merely personal services, any more than it will compel an employer to retain in his personal service one who, no matter for what cause, is not acceptable to him for service of that character. The right of an employe engaged to perform personal service to quit that service rests upon the same basis as the right of his employer to discharge him from further personal service. If the quitting in the one case or the discharging in the other is in violation of the contract between the parties, the one injured by the breach has his action for damages; and a court of equity will not, indirectly or negatively, by means of an injunction restraining the violation of the contract, compel the affirmative performance from day to day or the affirmative acceptance of merely personal services. Relief of that character has always been regarded as impracticable. *Arthur v. Oakes*, 63 F. at 318.

It is this unsatisfactory private relationship which the California Supreme Court is attempting to perpetuate against Dr. Weaver's will and his best medical judgment. After six years, Dr. Weaver sees no alternative but to terminate the physician/patient relationship. No court can construct and compel such an intimate relationship where none exists without violating the Thirteenth Amendment.

V. As A Matter Of State Law, There Is No General Duty To The State Pursuant To Which Dr. Weaver May Be Compelled To Provide Services To Any Patient.

As noted above, in the absence of a general duty to the sovereign to provide services for the general good, the Thirteenth Amendment prohibits any individual from being compelled to provide personal services against his or her will. In the trial court, the Respondent attempted to argue that section 1317 of the California Health & Safety Code mandated that Dr. Weaver

provide his services to any and all dialysis patients. The trial court, in interpreting section 1317 and rejecting Respondent's position, noted in Findings of Fact 18 and 20:

> A patient, like Petitioner [Ms. Payton], with end-stage renal disease, will not become a medical emergency if that person obeys medical orders, avoids drug abuse and appears for and has regularly scheduled hemodialysis treatments.
>
> * * * *
>
> Petitioner suffers from end-stage kidney disease which in and of itself is not an emergency condition. Although, as a result of her condition, Petitioner requires chronic dialysis treatment, that need cannot be described as emergency care within the context of Health and Safety Code §1317 or otherwise. See Appendix E.

Nor does the state of California make it a prerequisite to licensing physicians that they accept any patient for treatment, *Agnew v. Parks*, 172 Cal. App. 2d 756, 343 P.2d 118 (1959),[4] or forbid a physician from terminating the patient/physician relationship. *Lathrope v. Flood*, 6 Cal. Unrep. 637, 63 P. 1007 (1901).[5] The

[4]It is a generally accepted principle of common law that a doctor need not enter into a patient/physician relationship upon terms and conditions he or she finds unacceptable. *See, e.g., Dabney v. Briggs*, 219 Ala. 127, 121 So. 394 (1928); *Vidrine v. Mayes*, 127 So.2d 809 (La. 1961). Certainly, a physician may impose as a condition for entering into a contractual relationship with a patient that the patient follow the prescribed treatment. In the instant case, Dr. Weaver agreed to continue to provide dialysis treatment to Ms. Payton so long as she followed the conditions set forth in the trial court's initial order. In effect, a new patient/physician relationship was created upon set terms and conditions. Ms. Payton's failure to abide by any of those conditions precludes her from seeking further services from Dr. Weaver.

[5]State courts have held that it is the duty of the patient to use ordinary prudence for his or her self and failure to do so will preclude the patient from holding the physician answerable for the eventual consequences. *See, e.g., Leadingham v. Hillman*, 224 Ky. 177, 5 S.W.2d 1044 (1928). Similarly, courts have found that in the exercise of due care, the patient must submit to the treatment prescribed by the physician. *See, e.g., Steele v. Woods*, 327 S.W.2d 187 (Mo. 1959). As noted,

(footnote continued on following page)

mere existence of a licensing statute for physicians does not compel a physician to provide services to whoever requests them, *Hur-*

(footnote continued from previous page)

Ms. Payton failed to adhere to any of the conditions imposed by the court.

The conditions were that Ms. Payton:

1. keep all appointments at their scheduled time;
2. refrain from all use of alcohol;
3. refrain from all use of drugs, except those prescribed by her physician;
4. maintain prescribed dietary habits;
5. in all respects cooperate with those providing her care and abide by her physician's prescribed medical regimens; and
6. enter into and participate in good faith in a program of regular psychotherapy and/or counselling. (See Appendix E).

The trial court's findings of fact set forth her violations as follows:

6. On numerous occasions from May 4, 1979 to the date of hearing on this matter Petitioner failed and neglected to keep appointments with Dr. Weaver and BMA of Oakland at their scheduled times.
7. On numerous occasions from May 4, 1979 to the date of hearing on this matter Petitioner failed and neglected to refrain from use of drugs except those prescribed by her physician, but, on the contrary, sought out and bought barbiturates through illegal purchases on the street from drug pushers and used these drugs to the detriment of her health. In purchasing and using such drugs Petitioner knew that she was acting contrary to the interests of her health.
8. * * * *
9. On numerous occasions from May 4, 1979 up to the date of hearing on this matter Petitioner failed and neglected to maintain prescribed dietary habits.
10. On numerous occasions from May 4, 1979 up to the date of hearing on this matter Petitioner failed and neglected to cooperate with those providing her care and failed and neglected to abide by her physician's prescribed medical regimen.
11. On numerous occasions from July 10, 1979 up to the date of hearing on this matter, Petitioner failed to participate regularly and in good faith in a program of psychotherapy and/or counselling, but on the contrary, voluntarily terminated such programs.
12. Petitioner was aware of each and all of the conditions to be met by her in the above stipulations and was aware of her failure to meet such conditions. Petitioner's failure to meet those conditions was and has been knowingly and intentional on her part. See Appendix E.

ley v. Eddingfield, 156 Ind. 416, 59 N.E. 1058 (1901), and California courts have recognized that a physician in that state may not be compelled to accept a particular patient for treatment, *Agnew v. Parks, supra; see also, Hiser v. Randolph,* 126 Ariz. 608, 617 P.2d 774 (1980), and may terminate the relationship with his or her patient upon providing adequate notice and an opportunity to seek alternative care. *See, e.g., Lathrope v. Flood, supra; see also, Gray v. Davidson,* 15 Wash. 2d 257, 130 P.2d 341 (1942). In the case at bar, Ms. Payton had eighteen months between being initially advised of Dr. Weaver's intention to terminate the relationship and his second notification. She clearly had adequate notice and ample opportunity to make arrangements for her care. Accordingly, Dr. Weaver clearly satisfied all his obligations under state common law as Ms. Payton's physician and there is no unanswered question of state law to be addressed.[6]

In summary, Canon VI of the American Medical Association's Principles of Medical Ethics provides that "a physician shall, in the provision of appropriate patient care, except in emergencies, be free to choose whom to serve, with whom to associate, and the environment in which to provide medical services." AMA Principles of Medical Ethics No. VI. For the reasons stated

[6]To further illustrate the distinction between compelling services pursuant to a general duty to the sovereign for the general good and compelling private personal services from one individual to another, it should be noted that courts have a limited power to appoint counsel in criminal defense cases. *Powell v. Alabama,* 287 U.S. 45, 73 (1932). *Scott v. Illinois,* 440 U.S. 367, 373 (1979). There are few functions more singularly limited to the sovereign than the prosecution of criminal offenses. As a necessary constitutional adjunct to the sovereign's prosecution of criminal offenses, there must be representation for the criminal defendant. Accordingly, attorneys may be required as special officers of the court to provide their services to the state as defense counsel. Pursuant to this general duty to the sovereign, an individual attorney may be compelled to provide services to a particular defendant, but that does not transform the general duty owed to the sovereign into a personal servitude to a specific individual. In contrast, as noted above, there is no duty to the state on the part of the physician to provide health care services to any patient.

above, the California Supreme Court's decision compelling Dr. Weaver to provide dialysis treatments to Ms. Payton against his will and against his best medical judgment has placed him in involuntary servitude in violation of the Thirteenth Amendment. On behalf of its members and the members of the medical community, the Association is equally concerned with the violation of the Canons of Medical Ethics which the California Supreme Court has imposed on Dr. Weaver. As such, the decision of the California Supreme Court threatens the integrity of the medical profession and has a chilling effect on a physician's medical judgment in the provision of medical services. This Court is therefore urged to examine this critical issue for its ramifications for the medical community and health care in addition to the constitutional dimensions of the issue herein presented.

CONCLUSION

For the reasons stated herein, the Amicus Curiae, the Renal Physicians Association, respectfully urges this Court to grant the Petition For a Writ of Certiorari to the California Supreme Court.

Dated: July 9, 1981

Respectfully submitted,

ROBERT J. PRISTAVE
Counsel of Record
LINDA A. MALONE
DREW P. KAPLAN
Attorneys for Amicus Curiae

Of Counsel:

ROSS, HARDIES, O'KEEFE,
BABCOCK & PARSONS

APPENDIX A

1st Civil No. 50094

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

EN BANK

PAYTON, Plaintiff,

Respondent and Appellant

v.

WEAVER, JR., ET AL.,

Defendants, Appellants and Respondents.

Petition for hearing is granted, and the cause and defendants' petition for supersedeas are transferred to this court. The petition for writ of supersedeas is denied. The cause is re-transferred to the Court of Appeal, First District, Division One, for determination of the pending appeals. The order of the Alameda County Superior Court, dated June 30, 1980, shall remain in effect during the pendency of the appeals.

The motion for reconsideration of the temporary stay granted February 24, 1981 is denied. The motion to join Alameda County as a party to this proceeding is denied.

BIRD,

Chief Justice

TOBRINER,

Justice

MOSK

Justice

RICHARDSON,

Justice

NEWMAN,

Justice

Jusitce

Justice

Filed on March 11, 1981

APPENDIX B

Court of Appeal of the State of California
In And For The
First Appellate District
Division One

Brenda Marie Payton, *Plntf.., Rspdt., and Applt.* *vs.* John C. Weaver, Jr., M.D., et al., *Dfdnts., Applts., and Rspdts.*	No. 50094 Alameda Superior Court No. 520530-5

BY THE COURT:

The petition for writ of supersedeas is granted. The effect of the order dated June 30, 1980, for stay of execution of judgment and continuation of temporary order in Alameda County Superior Court Action No. 520530-5 Payton v. Weaver, et al., is hereby stayed pending final determination of the appeal on file herein.

Dated February 20, 1981

Elkington, J. Acting P.J.

APPENDIX C

Wilson & Casey
Law Offices
927 Broadway
Oakland, California 94612
(415) 465-6511
Attorney for Petitioner

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

BRENDA MARIE PAYTON, *Petitioner,* *vs.* JOHN C. WEAVER. M.D., PROVIDENCE HOSPITAL, HERRICK HOSPITAL, ALTA BATES HOSPITAL, BMA of OAKLAND, INC., AND DOES I through XX, inclusive, *Respondents.*	No. 520530-5 ORDER FOR STAY OF EXECUTION OF JUDGMENT AND CONTINUATION OF TEMPORARY ORDER

This matter came on regularly for hearing before the above entitled Court of June 23, 1980, pursuant to Petitioner's Motion of Stay of Execution of Judgment and Continuation of Temporary Order made orally on June 18, 1980 and filed on June 23, 1980. WARREN B. WILSON and JOANNE F. CASEY appeared as attorneys for Petitioner, BRENDA MARIE PAYTON; Hanson, Bridgett, Marcus, Vlahos and Stromberg, by ROBERT RUSKY, appeared as attorney for Respondents ALTA BATES HOSPITAL and HERRICK HOSPITAL; Berry and Berry, by JOHN H. DICKERSON, appeared as attorney for Respondents PROVIDENCE HOSPITAL; CHARLES

BOND as attorney for Respondents, JOHN C. WEAVER, M.D. and BMA of OAKLAND, INC.

The Court considered Petitioner's motion and heard oral arguments on the matter from all parties and the cause was submitted for decision.

In making the following orders to preserve the status quo pending appeal, the Court has taken into consideration the gravity of the consequences to Petitioner of its order and also the possibility that Petitioner, without adequate medical treatment, could die before her appeal is perfected, thereby rendering the issues of the appeal nugatory.

Under the inherent power to exercise reasonable control over all proceedings connected with the litigation before it, vested in this Court under *Code of Civil Procedure* §187 and also under the scope of the trial court's authority as specifically ennunciated in *City of Pasadena v. Superior Court,* 157 Cal. 781 (1910), the Court makes the following orders:

1. That execution of its judgment and order dated June 30, 1980, is hereby stayed pending the perfection of Petitioner's appeal.

2. That the temporary order made by this Court on April 10, 1980 that Respondents JOHN C. WEAVER, M.D. and BMA of OAKLAND, INC. continue to provide hemodialysis to Petitioner on a regular basis be continued pending Petitioner's appeal.

3. That Petitioner is to cooperate with Respondent JOHN C. WEAVER. M.D. and follow all of his orders and directions to the best of her ability to do so.

Dated: June 30, 1980.

RICHARD BARTALINI
Judge of the Superior Court

APPENDIX D

HANSON, BRIDGETT, MARCUS, VLAHOS & STROMBERG
STEPHEN B. PECK
333 Market Street, Suite 2300
San Francisco, California 94105
Telephone: (415) 777-3200
Attorney for Respondents
ALTA BATES HOSPITAL and HERRICK HOSPITAL

FILED
Jun 30, 1980
Rene C. Davidson,
County Clerk
By_____
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

BRENDA MARIE PAYTON,
Petitioner,

vs.

JOHN C. WEAVER, JR., M.D., PROVIDENCE HOSPITAL, HERRICK HOSPITAL, ALTA BATES HOSPITAL, BMA OF OAKLAND, INC., and DOES I through XX, inclusive,
Respondents.

NO. 520530-5
JUDGMENT DENYING PEREMPTORY WRIT OF MANDATE AND INJUNCTION

Entered In
Judgement Book
Book (Reel)
601 Pg 3
Jun 30 1980
Rene C. Davidson,
County Clerk

This matter came on regularly for hearing before the above-entitled court on April 10, 11 and 17, 1980, the Honorable Richard Bartalini, Judge Presiding, pursuant to the verified Petition, Amended Petition and Second Amended Petition of BRENDA MARIE PAYTON and the alternative writ of mandate issued under the seal of this Court and served on respondents in the manner provided by law. Warren Wilson and Joanne Casey ap-

peared as attorneys for Petitioner, BRENDA MARIE PAYTON; Hanson, Bridgett, Marcus, Vlahos & Stromberg, by Stephen B. Peck, appeared as attorneys for Respondents, ALTA BATES HOSPITAL and HERRICK HOSPITAL; Berry and Berry, by Phillip Berry appeared as attorneys for Respondent PROVIDENCE HOSPITAL; Charles Bond, Professional Law Corporation, by Charles Bond and Robin G. Pulich appeared as attorneys for Respondents BMA OF OAKLAND, INC., and DR. JOHN C. WEAVER, JR.

The record of the proceedings before the Honorable Richard Bartalini having been received into evidence and having been examined by the Court, the Respondents ALTA BATES HOSPITAL, HERRICK HOSPITAL and PROVIDENCE HOSPITAL having filed an answer to the Petition, Amended Petition and Second Amended Petition, each side having submitted memoranda of points and authorities in support of their respective contentions, fully argued the matter orally before this Court, and the Court having heard the testimony of BRENDA MARIE PAYTON, Ronald Reuss, Wayne Hardwick, M.D., Donald Block, M.D., James Rosen, M.D., JOHN C. WEAVER, JR., M.D., Leroy Lewis, Craig Dennis, M.D., Margaret Kelley, and Juanita Hill, the cause having been submitted for decision.

IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. Petitioner, BRENDA MARIE PAYTON, requests that a peremptory writ of mandate and a permanent injunction be issued herein against Respondents JOHN C. WEAVER, JR., M.D., PROVIDENCE HOSPITAL, HERRICK HOSPITAL, ALTA BATES HOSPITAL and BMA OF OAKLAND, INC. be and hereby are denied, for the reason that said Respondents are found to have no legal duty to provide, or to continue to provide, non-emergency regular hemodialysis treatements (sic) to Petitioner.

2. The alternative writs of mandate heretofore issued in this action be and hereby are discharged; and

3. Each side shall bear their own costs and attorneys' fees in this action.

DATED: June 30, 1980

THE HONORABLE
RICHARD BARTALINI

Judgment entered on , 19 , in the Judgment Book, Volume No. , Page .

, *Clerk*

By
Deputy Clerk

APPENDIX E

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Telephone: (415) 835-8330

Attorney for Defendant
PROVIDENCE HOSPITAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

BRENDA MARIE PAYTON *Plaintiff,* *v.* JOHN C. WEAVER, M.D., PROVIDENCE HOSPITAL, et al. *Defendants.*	NO. 520530-5 FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come on for hearing and extensive oral and documentary evidence having been received and the matter having been argued and submitted for decision and good cause appearing therefore, it is hereby ordered, adjudged and decreed that:

PROCEDURAL MOTION

1. Petitioner's Motion to amend her pleadings for a fourth time by the addition of an Amended Second Petition for Writ of Mandate or alternatively for Injunctive Relief to Conform to Proof is denied.

FINDINGS OF FACT

1. Providence Hospital of Oakland, Herrick Hospital and Alta Bates Hospital are separate and distinct corporate entities currently doing business in the County of Alameda as health care providers. John C. Weaver, Jr., M.D., is an individual duly licensed to practice medicine in the State of California and a fully qualified and experienced specialist in the field of nephrology. BMA of Oakland, Inc. is a separate corporation and medical care provider which operates and has operated an out-patient clinic housed in facilities of Providence Hospital.

2. Petitioner, Brenda Marie Payton, is an individual with a chronic kidney ailment requiring her to have periodic dialysis treatment. For approximately 5 years as a patient of Dr. Weaver and an out-patient of BMA of Oakland, Inc. she has received hemodialysis treatment. She also during this time has on occasion received peritoneal dialysis. Both forms of dialysis treatment purge the body fluids of poisons and toxic substances harmful to good health and life.

3. On several occasions during the 5 years that he has attempted to provide her with medical care, Dr. John C. Weaver, Jr. has had to advise Petitioner that he could no longer act as her doctor owing to her failure to follow medical instructions and her disruptive and harmful activities which constitute a danger to herself and to other patients. Shortly prior to the original filing of the petition in this matter, Dr. John C. Weaver, Jr., gave notice of his intent to withdraw from the physician-patient relationship. A final letter to Petitioner was sent by Dr. Weaver on March 3, 1980 notifying her that he would no longer treat her after April 5, 1980.

4. As a result of the first Court hearing on the matter herein it was stipulated by Petitioner, Dr. John C. Weaver, Jr., BMA of Oakland, Inc. and Providence Hospital as follows:

1) The patient will keep all appointments at their schedule time;

2) The patient will refrain from all use of alcohol;

3) The patient will refrain from all use of drugs, except those prescribed by her physician;

4) The patient will maintain prescribed dietary habits; and

5) The patient will in all respects cooperate with those providing her care and abide by her physician's prescribed medical regimen.

The obligations of this order are interdependent so that the obligation to render medical care is dependent upon the patient's compliance with the conditions of this order.

During this interim period of sixty (60) days, the patient shall seek to make other arrangements for her medical care and Respondent Weaver shall cooperation (sic) in this process.

Providence Hospital will accept Petitioner as a patient provided she is formally admitted by and under the care of a properly qualified member in good standing of its hospital staff and cooperates in good faith as a patient, giving due and reasonable consideration to the needs and rights of other patients.

This Stipulation was entered into following negotiations amongst attorneys for the parties affected. The Stipulation was made on or about May 4, 1979 and thereafter incorporated as a part of the Court's Order.

4*. Thereafter on or about July 10, 1979, Petitioner and Dr. John C. Weaver, Jr. and BMA of Oakland, Inc. and Providence Hospital reaffirmed to the original Stipulation and added a sixth condition as follows:

6) The patient will enter into and participate in good faith in a program of regular psychotherapy and/or counselling.

*Numbered as in original.

This affirmation and additional condition was entered into following negotiations amongst attorneys for the parties affected. On or about July 10, 1979 and thereafter incorporated as a part of a Court Order.

6. On numerous occasions from May 4, 1979 up to the date hearing on this matter Petitioner failed and neglected to keep appointments with Dr. Weaver and BMA of Oakland at their scheduled times.

7. On numerous occasions from May 4, 1979 up to the date of hearing on this matter Petitioner failed and neglected to refrain from use of drugs except those prescribed by her physician, but, on the contrary, sought out and bought barbituates through illegal purchases on the street from drug pushers and used these drugs to the detriment of her health. In purchasing and using such drugs Petitioner knew that she was acting contrary to the interests of her health.

•

9. On numerous occasions from May 4, 1979 up to the date of hearing on this matter Petitioner failed and neglected to maintain prescribed dietary habits.

10. On numerous occasions from May 4, 1979 up to the date of hearing on this matter Petitioner failed and neglected to cooperate with those providing her care and failed and neglected to abide by her physician's prescribed medical regimen.

11. On numerous occasions from July 10, 1979 up to the date of hearing on this matter Petitioner failed to participate regularly and in good faith in a program of psychotherapy and/or counselling, but on the contrary, voluntarily terminated such programs.

12. Petitioner was aware of each and all of the conditions to be met by her in the above stipulations and was aware of her

*Numbered as in original; no material deleted.

failure to meet such conditions. Petitioner's failure to meet those conditions was and has been knowingly and intentional on her part.

13. Petitioner's failure to meet the above conditions has constituted gross non-cooperation with her treating physician, BMA of Oakland and Providence Hospital. Further, during times that Petitioner has sought and received treatment at BMA of Oakland as an out-patient, at the emergency room of Providence Hospital when admitted by Dr. John C. Weaver, Jr., her conduct has been disruptive, abusive, and unreasonable such as to trespass upon the rights of other patients and to endanger their rights to full and adequate treatment; her use of profane and vulgar language, her exposure of herself has been an imposition on the nursing staff.

14. In the weighing of the rights and privileges of other patients at BMA of Oakland and Providence Hospital, the rights and equities of those other patients are superior to the claimed rights or equities of Petitioner under the facts shown herein.

15. Petitioner has not been discriminated against on the basis of race or lifestyle or at all. Petitioner has not been refused dialysis by any named Respondent on the basis of any activity on the part of Respondent Dr. Weaver, Jr. or Respondent BMA of Oakland.

16. In late 1978, Petitioner applied for admission into the regular out-patient hemodialysis program at Alta Bates Hospital. Alta Bates Hospital denied Petitioner's application for admissions to its regular out-patient program for reasons other than her race or indigency or the activity of Respondent Dr. Weaver or Respondent BMA of Oakland. At the time of Petitioner's application for admission and Alta Bates Hospital's denial thereof, Petitioner was not in an emergency condition. Since her application for admission and Alta Bates Hospital's denial thereof, Petitioner has had no further contacts with Alta Bates Hospital and has never received hemodialysis treatments at Alta Bates Hospital.

17. In late 1978, Petitioner applied for admission into the regular out-patient hemodialysis program at Herrick Hospital. Herrick Hospital denied Petitioner's application for admission to its regular out-patient program for reasons other than her race or indigency or the activity of Respondent Dr. Weaver or Respondent BMA of Oakland. At the time of Petitioner's application for admission and Herrick Hospital's denial thereof, Petitioner was not in an emergency condition. Since her application for admission and Herrick Hospital's denial thereof, Petitioner has had no further contacts with Herrick Hospital and has never received hemodialysis treatments at Herrick Hospital.

18. A patient, like Petitioner, with end stage renal disease, will not become a medical emergency if that person obeys medical orders, avoids drug abuse and appears for and has regularly scheduled hemodialysis treatments.

19. Regular out-patient dialysis treatment of chronic kidney patients requires expertise and equipment not normally found in emergency rooms.

20. Petitioner suffers from end stage kidney disease which in and of itself is not an emergency condition. Although, as a result of her condition, Petitioner requires chronic dialysis treatment, that need cannot be described as a need for emergency care within the context of Health and Safety Code §1317 or otherwise.

21. Petitioner has freedom of several choices available by which she can be kept away from dangerous drugs and alcohol, helped to stay on a proper dietary regimen and in all other ways caused to cooperate with those attempting to provide her with care. Petitioner therefore is not without means to arrange for her own care.

22. It is neither reasonable nor necessary to require any of the defendants to provide Petitioner with hemodialysis on a regular out-patient or in-aptient basis while Petitioner exercises complete freedom to indulge in the use of dangerous drugs, al-

cohol and the other excesses. (Although apparently without any personal control).

CONCLUSIONS OF LAW

1. Petitioner at this stage is not entitled to amend her pleadings to conform to proof.

2. Petitioner by frequent violations of the conditions of stipulations and orders herein is estopped to claim any further relief under the pleadings. By themselves said stipulations and orders do not, however, constitute a final determination and adjudication of the rights, duties and responsibilities of the parties. The findings of facts and conclusions of law herein constitute a final determination and adjudication of the rights, duties, and responsibilities of the parties.

3. Petitioner has no absolute right to dialysis treatment under the Hill-Burton Act (41 USC §291 *et seq.*) or any of the administrative regulations thereunder from any Respondent. Under said Act and regulations, the hospitals and BMA of Oakland are free to determine eligibility for services, insofar as treatment is reasonably refused and due process has been afforded and a reasonable volume of services is afforded to indigents. The Court finds no violation of either the Hill-Burton Act or the Civil Rights Act (42 USC §2000d *et seq.*) herein.

4. Petitioner has not been discriminated against on the basis of race, lifestyle or at all.

5. Upon weighing of the equities amongst the various parties involved, including other patients of the various health care providers, Petitioner has no legal right to compel medical service from any of the Respondents for chronic or regular care of her kidney problems through dialysis.

6. Should Petitioner present herself at any emergency department of any of the Respondent health care providers claiming a need to emergency care, a determination shall be made at that time by qualified physicians to see whether her condition

constitutes an emergency and she is therefore entitled to medical services within the terms of §1317 of the Health and Safety Code.

7. There is no present duty on the part of any Respondent requiring any one of them to provide Petitioner with regular out-patient dialysis treatment.

8. Dr. John C. Weaver, Jr. has given sufficient notice to Petitioner and has discharged all obligations imposed by the patient-physician relationship with Petitioner.

9. Respondent John C. Weaver, Jr., M.D. is discharged from any further obligation to provide medical care to Petitioner unless he shall voluntarily accept such obligation in the future.

10. Respondent BMA of Oakland, Inc. is discharged from any further obligation to provide medical care to Petitioner unless it shall voluntarily accept such obligation in the future.

11. Respondent Providence Hospital is discharged from any further obligation to provide medical care to Petitioner unless it shall voluntarily accept such obligation in the future.

12. None of the Respondent hospitals is required to provide to Petitioner as part of its emergency treatment hemodialysis on a regular out-patient basis.

13. Petitioner shall take nothing by reason of her "Petition for Writ of Mandate", "Amended Petition for Writ of Mandate", "Second Petition for Writ of Mandate", or any other pleading herein. Petitioner's Request for Mandatory Injunction is denied.

14. Neither Alta Bates Hospital nor Herrick Hospital have violated the Hill-Burton Act (42 USC §291, *et seq.*), the Civil Rights Act (42 USC §2000d, *et seq.*), or Health and Safety Code §1317 in denying Petitioner regular out-patient hemodialysis treatments.

DATED: June 19, 1980

Judge of the Superior Court